



General Assembly

January Session, 2015

***Raised Bill No. 6903***

LCO No. 4237



Referred to Committee on GOVERNMENT ADMINISTRATION  
AND ELECTIONS

Introduced by:  
(GAE)

***AN ACT SUBJECTING FOUNDATIONS OF PUBLIC INSTITUTIONS OF  
HIGHER EDUCATION TO THE FREEDOM OF INFORMATION ACT.***

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2015*) Any foundation that is or  
2       has been established for a constituent unit or a public institution of  
3       higher education shall be considered a public agency, as defined in  
4       section 1-200 of the general statutes, for purposes of the Freedom of  
5       Information Act, as defined in section 1-200 of the general statutes.

6       Sec. 2. Section 4-37e of the general statutes is repealed and the  
7       following is substituted in lieu thereof (*Effective October 1, 2015*):

8       As used in this section, [and] sections 4-37f to [4-37j] 4-37k,  
9       inclusive, as amended by this act, and section 1 of this act:

10       (1) "State agency" means each state board, authority, commission,  
11       department, office, institution, council or other agency of the state  
12       including, but not limited to, each constituent unit and each public  
13       institution of higher education.

14 (2) "Foundation" means an organization, fund or any other legal  
15 entity which is (A) exempt from taxation pursuant to Section 501(c)(3)  
16 of the Internal Revenue Code of 1986, or any subsequent  
17 corresponding internal revenue code of the United States, as from time  
18 to time amended, and (B) established for the principal purpose of  
19 receiving or using private funds for charitable, scientific, cultural,  
20 educational or related purposes that support or improve a state agency  
21 or for coordinated emergency recovery purposes. [Such] Except as  
22 provided in section 1 of this act, such an organization, fund or other  
23 legal entity shall not be deemed to be a state agency or a public agency,  
24 as defined in section 1-200.

25 (3) "Executive authority" means (A) a department head, as defined  
26 in section 4-5, (B) the executive secretary or president of a constituent  
27 unit, (C) the chief executive officer of a public institution of higher  
28 education, and (D) the chief executive officer of any other state agency.

29 (4) "Constituent unit" means a constituent unit as defined in section  
30 10a-1.

31 (5) "Public institution of higher education" [means a public college  
32 or university in the state system of higher education or The University  
33 of Connecticut School of Law] has the same meaning as provided in  
34 section 10a-50.

35 (6) "Coordinated emergency recovery" means the support and  
36 improvement of state services affected by a natural disaster, act of  
37 domestic terrorism, catastrophic event or other unforeseen emergency,  
38 including, but not limited to, services provided by the Department of  
39 Emergency Services and Public Protection and the Office of Victim  
40 Services.

41 Sec. 3. Section 4-37f of the general statutes is repealed and the  
42 following is substituted in lieu thereof (*Effective October 1, 2015*):

43 (a) The executive authority of each state agency for which a

44 foundation is established shall [, in accordance with a policy adopted  
45 by the board of trustees of the constituent unit for each state agency  
46 which is a constituent unit or which is a public institution of higher  
47 education under the jurisdiction of the constituent unit, ensure that, or  
48 the executive authority of each state agency for which a foundation is  
49 established for the principal purpose of coordinated emergency  
50 recovery shall] ensure that the following requirements are complied  
51 with:

52 (1) The foundation shall have a governing board to oversee its  
53 operation;

54 (2) If the state agency is a constituent unit, the following persons  
55 shall serve as nonvoting members of the governing board of the  
56 foundation unless the bylaws of the foundation provide that they be  
57 voting members: The executive authority of the constituent unit, or his  
58 designee, a student enrolled at an institution under the jurisdiction of  
59 the constituent unit, who shall be elected by the students enrolled at  
60 the institutions under the jurisdiction of the constituent unit, and a  
61 member of the faculty of any such institution, who shall be elected by  
62 the faculty of the institutions under the jurisdiction of the constituent  
63 unit. Elections pursuant to this subdivision shall be conducted in  
64 accordance with procedures for such elections established by the board  
65 of trustees of the constituent unit;

66 (3) If the constituent unit is the [Board of Trustees of the  
67 Community-Technical Colleges or the Board of Trustees of] regional  
68 community-technical colleges or the Connecticut State University  
69 System, the purposes of the foundation shall be limited to providing  
70 funding for (A) scholarships or other direct student financial aid, and  
71 (B) programs, services or activities at one or more of the institutions  
72 within its jurisdiction;

73 (4) If the state agency is a public institution of higher education, the  
74 following persons shall serve as nonvoting members of the governing

75 board of the foundation unless the bylaws of the foundation provide  
76 that they be voting members: The executive authority of the  
77 institution, or his designee, a student enrolled at the institution, who  
78 shall be elected by the students enrolled in the institution and a  
79 member of the faculty of the institution, who shall be elected by the  
80 faculty of the institution. Elections pursuant to this subdivision shall be  
81 conducted in accordance with procedures for such elections  
82 established by the board of trustees of the constituent unit which has  
83 jurisdiction over the institution;

84 (5) The governing board of the foundation shall annually file with  
85 the state agency an updated list of the members and officers of such  
86 board;

87 (6) The salaries, benefits and expenses of officers and employees of  
88 the foundation shall be paid solely by the foundation;

89 (7) The foundation shall use generally accepted accounting  
90 principles in its financial record-keeping and reporting;

91 (8) A foundation which has in any of its fiscal years receipts and  
92 earnings from investments totaling one hundred thousand dollars per  
93 year or more, or a foundation established for the principal purpose of  
94 coordinated emergency recovery that operated in response to an  
95 eligible incident, as defined in section 4-37r, during the fiscal year or  
96 with funds that exceeded one hundred thousand dollars in the  
97 aggregate, shall have completed on its behalf for such fiscal year a full  
98 audit of the books and accounts of the foundation. A foundation which  
99 has receipts and earnings from investments totaling less than one  
100 hundred thousand dollars in each fiscal year during any three of its  
101 consecutive fiscal years beginning October 1, 1986, shall have  
102 completed on its behalf for the third fiscal year in any such three-year  
103 period a full audit of the books and accounts of the foundation, unless  
104 such foundation was established for the principal purpose of  
105 coordinated emergency recovery and had completed on its behalf such

106 an audit for any year in any such three-year period. For each fiscal year  
107 in which an audit is not required pursuant to this subdivision financial  
108 statements shall be provided by the foundation to the executive  
109 authority of the state agency. Each audit under this subdivision shall  
110 be conducted (A) by an independent certified public accountant or, if  
111 requested by the state agency with the consent of the foundation, by  
112 the Auditors of Public Accounts, and (B) in accordance with generally  
113 accepted auditing standards. The audit report shall include financial  
114 statements, a management letter and an audit opinion which address  
115 the conformance of the operating procedures of the foundation with  
116 the provisions of sections 4-37e to 4-37i, as amended by this act,  
117 inclusive, and recommend any corrective actions needed to ensure  
118 such conformance. Each audit report shall disclose the receipt or use  
119 by the foundation of any public funds in violation of said sections or  
120 any other provision of the general statutes. The foundation shall  
121 provide a copy of each audit report completed pursuant to this  
122 subdivision to the executive authority of the state agency and the  
123 Attorney General. Each financial statement required under this  
124 subdivision shall include, for the fiscal year to which the statement  
125 applies, the total receipts and earnings from investments of the  
126 foundation and the amount and purpose of each receipt of funds by  
127 the state agency from the foundation. As used in this subdivision,  
128 "fiscal year" means any twelve-month period adopted by a foundation  
129 as its accounting year;

130 (9) There shall be a written agreement between the state agency and  
131 the foundation which (A) addresses any use by the foundation of the  
132 agency's facilities and resources including, but not limited to, office  
133 space, storage space, office furniture and equipment, utilities,  
134 photocopying services, computer systems and the maintenance by the  
135 state agency of the books and records of the foundation, provided any  
136 such books and records maintained by [the] a state agency other than a  
137 constituent unit or public institution of higher education shall not be  
138 deemed to be public records and shall not be subject to disclosure

139 pursuant to the provisions of section 1-210, as amended by this act, (B)  
140 provides that the state agency shall have no liability for the  
141 obligations, acts or omissions of the foundation, (C) requires the  
142 foundation to reimburse the state agency for expenses the agency  
143 incurs as a result of foundation operations, if the agency would not  
144 have otherwise incurred such expenses, (D) in the case of foundations  
145 established for a constituent unit of the state system of higher  
146 education or for a public institution of higher education, requires the  
147 foundation to establish and adhere to an investment policy and a  
148 spending policy that are consistent with sections 45a-535 to 45a-535i,  
149 inclusive, and (E) provides that if the foundation ceases to exist or  
150 ceases to be a foundation, as defined in section 4-37e, as amended by  
151 this act, (i) the foundation shall be prohibited from using the name of  
152 the state agency, (ii) the records of the foundation, or copies of such  
153 records, shall be made available to and may be retained by the state  
154 agency, provided any such records or copies which are retained by  
155 [the] a state agency other than a constituent unit or public institution of  
156 higher education shall not be deemed to be public records and shall  
157 not be subject to disclosure pursuant to the provisions of section 1-210,  
158 as amended by this act, and (iii) there are procedures for the  
159 disposition of the financial and other assets of the foundation. If the  
160 state agency is a constituent unit, the board of trustees of the  
161 constituent unit shall approve such agreement. If the state agency is a  
162 public institution of higher education, the board of trustees of the  
163 constituent unit which has jurisdiction over the institution shall  
164 approve such agreement; and

165 (10) If the foundation is established for the principal purpose of  
166 coordinated emergency recovery, the Department of Emergency  
167 Services and Public Protection shall be deemed the state agency for  
168 purposes of this section, and the deputy commissioner of said  
169 department with jurisdiction over the Division of Emergency  
170 Management and Homeland Security shall be deemed the executive  
171 authority for purposes of this section.

172     (b) In the case of a foundation established for a constituent unit or a  
173     public institution of higher education, the board of trustees of the  
174     constituent unit or public institution of higher education shall adopt a  
175     policy to implement the provisions of subsection (a) of this section.

176     Sec. 4. Section 4-37k of the general statutes is repealed and the  
177     following is substituted in lieu thereof (*Effective October 1, 2015*):

178     Notwithstanding any other provision of the general statutes, an  
179     agreement between a state agency and a foundation, as defined in  
180     section 4-37e, as amended by this act, shall not be deemed to be a  
181     contract for the performance of a governmental function within the  
182     meaning of section 1-218 unless such contract is between a constituent  
183     unit or public institution of higher education and such a foundation.

184     Sec. 5. Subsection (b) of section 1-210 of the general statutes is  
185     amended by adding subdivision (28) as follows (*Effective October 1,*  
186     *2015*):

187     (NEW) (28) Records containing personally identifiable information  
188     of a contributor or prospective contributor of a bona fide and lawful  
189     charitable contribution to any foundation, as defined in section 4-37e,  
190     as amended by this act, that is or has been established for a constituent  
191     unit, as defined in section 10a-1, or a public institution of higher  
192     education, as defined in section 10a-173.

193     Sec. 6. Section 4-37h of the general statutes is repealed and the  
194     following is substituted in lieu thereof (*Effective October 1, 2015*):

195     Any person soliciting funds or any other thing of value for donation  
196     to a foundation by a person, firm, corporation or other entity shall, at  
197     the time of such solicitation or in any receipt for or other written  
198     confirmation of such donation, clearly and conspicuously disclose to  
199     the person, firm, corporation or other entity that (1) the funds or other  
200     things of value donated are to be provided to the foundation, and  
201     [that] (2) the person, firm, corporation or other entity may request in

202 writing that its identity be confidential, and upon such request, the  
 203 identity of the person, firm, corporation or other entity shall not be  
 204 publicly disclosed, except in the case of a donation to a foundation  
 205 established for a constituent unit or public institution of higher  
 206 education, the personally identifiable information of a contributor or  
 207 prospective contributor shall be exempt from disclosure pursuant to  
 208 subdivision (28) of subsection (b) of section 1-210, as amended by this  
 209 act, without the need for such a request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	New section
Sec. 2	October 1, 2015	4-37e
Sec. 3	October 1, 2015	4-37f
Sec. 4	October 1, 2015	4-37k
Sec. 5	October 1, 2015	1-210(b)
Sec. 6	October 1, 2015	4-37h

**Statement of Purpose:**

To require transparency of expenditures by foundations established for a public institution of higher education.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*